

ITEL

April 21, 1992

Itel Rail Corporation

550 California Street
San Francisco, CA 94104
(415) 984-4200

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423

RECORDED NO. 9778-1 2-114A024
FBI/ICS

APR 23 1992 2:45 PM

INTERSTATE COMMERCE COMMISSION

Re: Amendment No. 9

Dear Mr. Strickland:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$16 recordation fee.

Please record the subject Amendment under the Lease Agreement dated as of March 15, 1978, between Itel Rail Corporation, successor to Itel Corporation, Rail Division, and Texas Mexican Railway Company, which was filed with the ICC on October 17, 1978, under Recordation No. 9778.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

Texas Mexican Railway Company (Lessee)
P.O. Box 419
Laredo, Texas 78040

The Amendment (i) deletes from the Lease Agreement Equipment Schedule No. 1; and (ii) adds thereto Schedule No. 5 which covers fifty (50) 50 foot, 70 ton, Plate B boxcars bearing reporting marks TM 4000-4049.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker
Legal Assistant

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AMENDMENT NO. 9

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 9 (the "Amendment") to that certain Lease Agreement made as of March 15, 1978, as amended, (the "Agreement") between ITEL Corporation, Rail Division and THE TEXAS MEXICAN RAILWAY COMPANY ("Lessee") is made as of this 27th day of MARCH, 1992 by and between ITEL RAIL CORPORATION, as successor in interest to ITEL Corporation, Rail Division ("Lessor") and Lessee.

RECITALS

- A. Lessor and Lessee are parties to the Agreement, pursuant to which 50 gondola cars bearing reporting marks from within the series TM 2000-2049 ("Undelivered Cars"), 300 box cars bearing reporting marks from within the series TM 3000-3299 ("Boxcars"), and 285 flat cars bearing reporting marks from within the series TM 400000-400299 ("Flatcars") (Boxcars and Flatcars collectively, the "Cars") have been leased by Lessor to Lessee.
- B. The following Cars were destroyed on or about the dates shown and ceased to be subject to the Agreement on such dates: TM 3069, March 3, 1980; TM 3033, September 12, 1985; TM 400276, September 3, 1986; and TM 400283, December 3, 1987.
- C. Pursuant to letters dated March 27, 1986, July 8, 1986, July 28, 1986, November 11, 1986, November 13, and November 14, 1991, 49 Flatcars, 186 Flatcars, 100 Boxcars, 115 Boxcars, 83 Boxcars, and 48 Flatcars, respectively, were terminated.
- D. Lessor and Lessee desire to add 50 cars to the Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree to amend the Agreement as follows:

- 1. All terms in the Agreement shall have their defined meanings when used in this Amendment.
- 2. Equipment Schedule No. 1 is hereby deleted from the Agreement.
- 3. Equipment Schedule No. 5 is hereby added to the Agreement.
- 4. With respect to the Cars on Equipment Schedule No. 5 only, Section 2 of the Agreement shall be deleted in its entirety and replaced by the following:

"2. Term

This Agreement shall remain in full force until terminated as to all Cars on such Schedule. The lease term with respect to any Car shall commence on the date such Car is marked with Lessee's reporting marks ("Delivery Date"), and shall expire as to all the Cars on such Schedule on December 22, 1993. After the Delivery Date of the final Car on such Schedule, Lessor shall provide Lessee a certificate (the "Certificate") setting forth the Delivery Date for each Car. Each date on such Certificate shall be deemed accurate, final and binding unless Lessee disputes such date in writing within 14 calendar days of receipt by Lessee of such Certificate."

- 5. With respect to the Cars on Equipment Schedule No. 5 only, the first five sentences of Subsection 3.A. shall be deleted and replaced by the following:

"3.A. The cost and expense of remarking the Cars to Lessee's reporting marks and of transporting the Cars to the Eligible Lines, prior to Initial Loading, shall be recaptured by Lessor pursuant to Subsection 6.A.(ii) of the Agreement. Lessee shall be liable for all expenses and charges for transportation or movement of any Cars requested by Lessee after Initial Loading."

6. With respect to the Cars on Equipment Schedule No. 5 only, the _____ shall be replaced with the _____ each time it appears in Section 6.

7. Subsection 6.D. of the Agreement shall be deleted in its entirety and replaced with:

"6. D. If Car Hire Rates Not Prescribed:

(i) If the ICC ceases to prescribe car hire rates or significantly alters in a way adverse to Lessor the manner in which car hire rates are prescribed or the rates themselves, the parties shall in good faith negotiate to amend this Section and the applicable Schedules so that the amounts Lessor receives in rent after such ICC action are approximately the same as Lessor would have received had no such ICC action occurred. If such good faith negotiations are unsuccessful, Lessor may terminate the Agreement with respect to any or all of the Cars on any Schedule upon not less than 30 days written notice to Lessee at any time during the Agreement.

(ii) Lessor shall determine car hire rates offered to users of deprescribed Cars and shall, at Lessor's expense, prepare and present the owner's case in any arbitration or other proceeding held to resolve disputed car hire rates."

Each party, pursuant to due corporate authority, has caused this Amendment to be executed by its authorized officer or other employee, and each of the undersigned declares under penalty of perjury that he or she holds the title indicated below, that the execution of this Amendment was the free act and deed of the corporation, the foregoing is true and correct and that this Amendment was executed on the date indicated below.

ITEL RAIL CORPORATION

By: Robert Kiehl
Title: Vice President Finance
Date: March 27, 1992

THE TEXAS MEXICAN RAILWAY COMPANY

By: [Signature]
Title: Mgr. Rates + Div.
Date: 3/23/92

EQUIPMENT SCHEDULE NO. 5

This Equipment Schedule No. 5 to that certain Lease Agreement (the "Agreement") made as of March 15, 1978, between **ITEL RAIL CORPORATION**, as successor in interest to ITEL Corporation, Rail Division ("Lessor") and **THE TEXAS MEXICAN RAILWAY COMPANY** ("Lessee") is made as of MARCH 27, 1992.

Lessor and Lessee agree as follows:

- Capitalized Terms:** All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Equipment Schedule No. 5 except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
- Cars Leased:** Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig	Description	Reporting Marks and Numbers	Cubic Capacity	Length	Inside Width	Height	No. of Cars
XM	70 ton, Plate B boxcars	TM 4000- 4049	5,043- 5,077	50'6"	9'6"	10'7"	50

Each party, pursuant to due corporate authority, has caused this Schedule to be executed by its authorized officer or other employee, and each of the undersigned declares under penalty of perjury that he or she holds the title indicated below, that the execution of this Schedule was the free act and deed of the corporation, the foregoing is true and correct and that this Schedule was executed on the date indicated below.

ITEL RAIL CORPORATION

THE TEXAS MEXICAN RAILWAY COMPANY

By: Robert Kiehl
Title: Vice President Finance
Date: March 27, 1992

By: [Signature]
Title: Mgrs. Rels. & Div
Date: 3/23/92